

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2006-005346

02/08/2007

HONORABLE GLENN M. DAVIS

CLERK OF THE COURT  
L. Muhammad  
Deputy

JAMES M GARTH, et al.

RONALD K BLAKE

v.

DAN OLSEN, et al.

C DAVID MARTINEZ

**JOINT PRETRIAL MEMORANDUM AND PROPOSED SCHEDULING ORDER**

The Court has received and reviewed Plaintiffs' *Motion to Set and Certificate of Readiness* and Defendants' *Controverting Certificate of Readiness*.

**IT IS ORDERED** as follows:

Counsel are to meet personally to discuss all of the matters set forth in Rule 16(b), Ariz. R. Civ. P. Counsel shall prepare and file with the Court, no later than **5:00 p.m. on March 12, 2007 (30 days from today's date)**, a Joint Pretrial Memorandum, and a proposed Order, for discovery, motion and disclosure deadlines.

If the parties agree to the dates, they should prepare an Order in the form set forth below, containing the provisions which are applicable to their case. For example, paragraph 1 of the Order set forth below need not be included in the parties' proposed Order if the parties intend to disclose their experts' identity and opinions at the same time they disclose their experts' areas of testimony. Similarly, if the parties agree to simultaneously disclose the identity and opinions of their expert witnesses, they need not include in their proposed Order the language set forth in paragraph 2a. and b., below.

The proposed Order shall include specific dates ("December 5, 2005" is a specific date. "90 days prior to trial" is a date in reference to a trial date and is not a specific date). All

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applicable blanks should be filed in, except for the date of the Scheduling and Status Conference, as indicated. Do not incorporate a firm trial date in the proposed Order.

If counsel are unable to agree on any of the items that are to be included in the Order, the reasons for their inability to agree shall be set forth in their Pretrial Memorandum and each shall prepare a separate proposed Order.

The Court will review the Joint Pretrial Memorandum and proposed Scheduling Order. If all is in order, the Court will set a scheduling and status conference close to the discovery cutoff date. At the scheduling and status conference, if the parties have completed discovery and are ready for trial, the Court will set firm dates for the final pretrial management conference and the trial. There will be no telephonic appearances at the status conference without prior Court approval. Counsel who will be the trial lawyers in the case must appear in person with their trial calendar. If the parties are not ready for trial, the matter will be placed on the Inactive Calendar for dismissal **within 60 days**.

If counsel feel a pretrial conference is still necessary at this stage of the litigation, they should address the reasons why in the first paragraph of the Joint Pretrial Memorandum.

If a Joint Pretrial Conference Memorandum and proposed Scheduling Order are not timely submitted, the Court will place the matter back on the Inactive Calendar for dismissal.

**SCHEDULING ORDER LANGUAGE:**

The Court has received and reviewed the parties' Joint Pretrial Memorandum and proposed Scheduling Order.

In accordance therewith,

**IT IS ORDERED** as follows:

1. The parties shall mutually and simultaneously disclose areas of expert testimony by **5:00 p.m. on \_\_\_\_\_, 200\*. [or]**
  - a. Plaintiffs shall disclose areas of expert testimony by **5:00 p.m. on \_\_\_\_\_, 200\*.**
  - b. Defendants shall disclose areas of expert testimony by **5:00 p.m. on \_\_\_\_\_, 200\*.**

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2. The parties shall mutually and simultaneously disclose the identity and opinions of their expert witnesses by **5:00 p.m. on \_\_\_\_\_, 200\***. [or]
  - a. Plaintiffs shall disclose the identity and opinions of their expert witnesses by **5:00 p.m. on \_\_\_\_\_, 200\***.
  - b. Defendants shall disclose the identity and opinions of their expert witnesses by **5:00 p.m. on \_\_\_\_\_, 200\***.
3. Any and all discovery requests shall be served by **5:00 p.m. on \_\_\_\_\_, 200\***.
4. The parties shall disclose all non-expert witnesses by **5:00 p.m. on \_\_\_\_\_, 200\***. [or]
  - a. Plaintiffs shall disclose areas of non-expert testimony by **5:00 p.m. on \_\_\_\_\_, 200\***.
  - b. Defendants shall disclose areas of non-expert testimony by **5:00 p.m. on \_\_\_\_\_, 200\***.
5. The parties shall mutually and simultaneously disclose their rebuttal expert witnesses and opinions by **5:00 p.m. on \_\_\_\_\_, 200\***.
6. All discovery shall be concluded by **5:00 p.m. on \_\_\_\_\_, 200\***.
7. The parties shall have exchanged up-to-date final Rule 26.1 Supplemental Disclosure Statements by **5:00 p.m. on \_\_\_\_\_, 200\***. This Order does not replace the parties' obligation to seasonably disclose on an on-going basis under Rule 26.1 as information becomes available.
8. Settlement conference (choose one):
  - a. 

**PRIVATE MEDIATION**

The parties shall participate in private mediation by **5:00 p.m. on \_\_\_\_\_, 200\***;
  - OR**
  - b. 

**REFERRAL TO ADR FOR SETTLEMENT CONFERENCE**

The parties shall participate in a Mandatory Settlement Conference. This case is referred to the Court's Office of Alternative Dispute Resolution for the appointment of a

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judge pro tempore to conduct a Settlement Conference. Counsel and/or the parties will receive a minute entry from ADR appointing the judge pro tempore. Counsel and any "pro per" parties will contact the appointed judge pro tempore to arrange the date, time and location for the Settlement Conference. The judge pro tempore is requested to conduct a settlement conference not later than \* \_\_\_\_\_, 2007. The Office of Alternative Dispute Resolution will not do the scheduling of the Settlement Conference so please do not contact that office.

If counsel prefer to use a private mediator to conduct the Settlement Conference, a Stipulation and Order re: alternative to ADR must be presented to the Court by no later than **5:00 p.m. on** \* \_\_\_\_\_, 2007.

IT IS ORDERED that the parties shall simultaneously submit confidential memoranda to the Judge Pro Tempore at least **5 days prior** to the date set for Settlement Conference.

**All counsel and their clients, or non-lawyer representatives who have full and complete authority to settle this case, shall personally appear and participate in good faith in this Settlement Conference, even if no settlement is expected.**

9. No expert witnesses, expert opinions, lay witnesses, or exhibits shall be used at trial other than those disclosed in a timely manner, except for good cause shown or written agreement of the parties.
10. All pretrial motions, other than motions *in limine*, must be filed by **5:00 p.m. on** \_\_\_\_\_, 200\*.
11. A **scheduling and status conference** is set for the purpose of assigning a trial date on [ LEAVE DATE AND TIME BLANK ] if the case has not settled. Counsel are to bring their trial calendars and the parties must appear in person and cannot appear telephonically for the status conference.
12. Should any discovery disputes arise, counsel, prior to filing discovery motions, shall meet and confer pursuant to Rule 37, Ariz.R.Civ.P. If the issues are straightforward enough not to require briefing, counsel may telephonically contact the Court to set up a telephonic conference to discuss any remaining issues.
13. The dates set forth in this Order are FIRM dates and will not be extended or modified by this Court absent good cause. Lack of preparation will not ordinarily be considered good cause.

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14. This case is removed from the Inactive Calendar and all requirements of Rule 38.1 of Ariz.R.Civ.P. are waived unless and until otherwise ordered by the Court.

**HONORABLE GLENN M. DAVIS  
MARICOPA COUNTY SUPERIOR COURT  
EAST COURT BUILDING  
101 WEST JEFFERSON  
5th FLOOR, COURTROOM 513  
PHOENIX, AZ 85003  
602-506-3135 TEL**

PLEASE NOTE this is an electronic courtroom: **E-Courtroom Policies**

Courtroom ECB-513 is one of the new “e-courtrooms” and provides state of the art equipment for case presentation. Please note the following provisions:

The e-courtroom does not have a court reporter present. If you wish to have a court reporter present for the duration of your matter, you must notify the Court at least **48 hours prior** to the beginning of the matter

All equipment will be ready for your use when you arrive in the Court. If for some reason it isn't, please contact the staff for assistance.

**DO NOT ATTEMPT TO SET UP THE COURT EQUIPMENT BY YOURSELF.**

**ALSO, PLEASE DO NOT UNPLUG, MOVE, OR IN ANY WAY ALTER ANY OF THE EQUIPMENT, MICROPHONES, CAMERAS, ETC. IN THE COURTROOM.**

**ELECTRONIC ("E") COURTROOM**

A record of proceedings may be made by videotape in lieu of a court reporter. (**See Notice below**) Should an official transcript be required, you may request that the Court prepare it. The party ordering the transcript must pay for it. With this new technology, a court reporter is likely not required and the parties are encouraged to experience the Court's video-recording system before requesting a court reporter.

If a court reporter is required, a **WRITTEN REQUEST MUST BE RECEIVED** by the Court at least **48 hours prior** to the hearing.

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**NOTICE**

**New Fee for Copies of Electronically Recorded Proceedings**

Effective Monday, January 27, 2003, a fee of \$20.00 will be charged for each copy of superior court proceedings digitally recorded and provided on compact Disc (CD) and for each copy of a superior court proceeding provided on videotape. The fee is due when the CD or videotape is picked up. Cash and in-state checks will be accepted for payment. Please make checks payable to: Clerk of the Superior Court.

Blank, unused CDs and videotapes will not be accepted in lieu of payment.

Beginning Monday, January 27, 2003, the pick up location for CD or videotape copies of superior court proceedings recorded in downtown Phoenix will be the court's Self Service Center located in the Law Library on the first floor of the East Court Building. Fees will be collected at the Self Service Center. Copies of superior court proceedings recorded at the court's Southeast Facility in Mesa and at the court's Northwest Facility in Surprise may be picked up, and fees paid, at the Self Service Centers at those locations.

Questions may be directed to Ken Crenshaw, Administrator, Electronic Records Services, 602-506-7100 or [kcrensa@superiorcourt.maricopa.gov](mailto:kcrensa@superiorcourt.maricopa.gov).

**Request for Daily Copy of Electronically Recorded Proceedings**

Obtain a form from the courtroom clerk or from the Self Service Center to request a daily copy of a court hearing or trial proceeding being conducted. Pay the applicable fee at the Self Service Center. Attach the receipt showing payment of fee and present both the receipt and the form to the courtroom clerk or bailiff. For copies of hearings or trial proceedings recorded previously, please call Electronic Records Services at 602-506-7100.

The proceeding will take place in the Superior Court's new "e-courtroom." A record of the proceedings may be made by videotape and CD in lieu of a court reporter. Should you want an unofficial copy of the proceedings, the Court will make a VHS videotape or "burn" a CD of the day's proceedings for a fee of \$20.00. If a CD or videotape is requested, please obtain a form from the courtroom clerk or from the Self Center to request a daily copy of a court hearing or trial proceeding being conducted. Pay the applicable fee **at the Self Service Center**. Attach the receipt showing payment of the fee and present both the receipt and the form to the courtroom clerk or bailiff. **For copies of hearings or trial proceedings recorded previously, please call Electronic Records Services at 602-506-7100.** The CD-R disk may be viewed using Microsoft's Media Player or JAVS' CaseViewer. "CaseViewer" is available for free from Jefferson Audio Visual Systems at:

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<http://www.javs.com/downloads/programs.htm>

Should an official transcript be required, you may request that the court prepare it. The party ordering the transcript must pay for it. With this new technology, a court reporter is likely not required and the parties are encouraged to experience the court's digital video recording system before requesting a court reporter. To request a transcript, call 602-506-7100 and provide the date of the proceeding, the case number, the case caption, if the transcript is for an appeal, and your name, address, and telephone number.

If a court reporter is required, the Court must receive a written request at least 48 hours before the commencement of the proceeding. Failure to timely request a court reporter will be deemed consent to proceed without a court reporter.

The Court suggests that counsel **PREPARE THE CASE FOR PRESENTATION** using the courtroom technology. To facilitate presentation of exhibits, counsel should consider having all documents (medical records, business records, photographs, etc.) that may be used in the case scanned in a non-proprietary format with the cost shared by the parties. It is suggested that the **DEPOSITIONS OF WITNESSES WHO MAY NOT BE AVAILABLE FOR TRIAL BE VIDEOTAPED.**

**AT THE FINAL PRETRIAL CONFERENCE OR ONE WEEK BEFORE TRIAL** counsel or their knowledgeable assistants shall present **all** exhibits to the division clerk **602-372-3182** for marking. The exhibits will be marked **numerically and serially** as they are listed in the pretrial statement - plaintiff's first, defendant's second. Duplicate exhibits will not be marked. Please advise the clerk, referring specifically to the pretrial statement, which exhibits may be marked directly in evidence.